IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12454 of 2001

For Approval and Signature:
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No. : NO

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO

5. Whether it is to be circulated to the Civil Judge? No :

THAKORE K PATEL

Versus

GUJARAT ELECTRICITY BOARD

Appearance:
MR ZUBIN F BHARDA for Petitioner No. 1
MR Deepak Dave for Mr.AD OZA for Respondents.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 28/06/2002

ORAL JUDGEMENT

1 Rule. Mr.Deepak Dave for Mr.A.D.Oza, learned Advocate appears and waives service of Rule. At the request of the learned Advocates appearing for the respective parties the matter is taken up for final hearing.

2 The petitioner's premises was visited by the officers of the respondent Board on 31/12/1998. After inspection of the premises, it was recorded by the officers of the respondent Board that the meter of electric consumption installed at the premises of the petitioner was running slow by 39.55% and further that the meter had been tampered with resulting into theft of electricity. The said meter was replaced by another

meter and the old meter was sent for laboratory test. The finding of the laboratory test shows that prima facie recording that the meter had been tampered with was correct and theft of the electricity had actually taken place. A supplementary bill of Rs.3,55,430.13 ps. was issued. The petitioner preferred an appeal and on payment of 30% of the supplementary bill the Appeal was entertained by the Appellate Committee. The Appellate Committee confirmed the finding as regards the theft, but in relation to the computation portion the Appellate Committee recalculated the factors B x C by directing that the said figure should be adopted at 0.648. As a consequence a revised supplementary bill was issued which has been admittedly paid up by the petitioner in installments.

3 Mr.Bharda, appearing on behalf of the petitioner has assailed the finding regarding calculation of factor BxC as well as the period for which the consumption pattern has been adopted as basis for arriving at revised calculation. It was submitted that the petitioner having specifically submitted data in his written submission, it was incumbent upon the Appellate Authority to deal with the grievance made by the petitioner and record its reasons for not accepting the same. That the order was entirely silent and no reason whatsoever was assigned as to why the contentions raised on behalf of the petitioner were not acceptable.

4 Mr.Dave, learned Advocate appearing for the respondent Board submitted that once the Appellate Committee had adopted certain basis and the petitioner having paid up the revised supplementary bill, it was not open to the petitioner to make any grievance at this stage. It was further submitted that as per condition no.34, which deals with the mode of computing the amount required to be paid for energy dishonestly used, no time limit or period was prescribed for the purpose of applying the formula and the computation was made as per stipulated formula of A, B, C and D factors. It was further submitted that the Appellate Committee had rightly taken into consideration the consumption pattern of November,1997 to see what had been the maximum consumption. In the affidavit in reply it is stated : "It is submitted that supplementary bill has been issued for past six months from the date of checking and the bill came to be prepared as per A,B,C,D formula".

5 Condition No.34 on which reliance has been placed by both the sides as is necessary for the present purpose reads as under :

"34. Payment for energy dishonestly used or abstracted or maliciously wasted or diverted.

Where it is established to the satisfaction of Board's Officer that a consumer has dishonestly abstracted used, consumed or maliciously caused energy to be wasted, or diverted, the value of the electrical energy thus abstracted, used, consumed, wasted or diverted shall be assessed by such officer for the past six months period or the actual period from the date of commencement of supply, whichever is less, in the manner specified hereinbelow and the value of energy so assessed shall be collected by including the same in the next bill or by a separate bill. Such amount shall always be deemed to be the arrears of electricity dues for all purposes." (emphasis supplied).

6. On a plain reading of the aforesaid condition it is apparent that the assessment for power which has been dishonestly consumed has to be made by the officer for the past six months period or the actual period from the date of commencement of supply whichever is less. In the present case, admittedly later portion is not applicable and hence only the period of past six months has to be taken into consideration for the purpose of assessment. Once the condition has prescribed the period which has to be taken for the purpose of assessment it is not open to an authority to ignore the same while applying the formula. It goes without saying that formula has to be applied in relation to the period which is prescribed in the opening portion of the condition; and while invoking the same condition the respondent cannot be heard to state that for the purpose of assessment though period of six months may be adopted while applying formula that cannot be the basis. A provision like the present condition which has statutorily been prescribed cannot be read in a truncated manner as is sought to be canvassed on behalf of the respondent unless and until there is an inherent indication in the provision itself that a different period is required to be adopted while applying the formula. Contention that while applying the formula no period is required to be taken into consideration is required to be stated to be rejected. Fallacy of this contention becomes apparent the moment one tests this: in a case as in the present case, the theft is detected on 31/12/1998 and hence the assessment is required to be made for past six months i.e. upto July,1998; acceptance of contention of the respondent would be that basis for applying formula could be any past period, i.e. any month of the year 1997,1995,1990 and so on. There is no certainity. A provision cannot be read in a manner which

gives go bye to a reasonable approach, and leaves its application to the whims and caprices of the authority; and would keep on changing with change of a person constituting the authority.

7 In view of what is stated hereinabove the petition is required to be allowed. The respondent no.3 i.e. Appellate Committee is hereby directed to take into consideration the detailed submission on this aspect made by the petitioner and recompute the amount chargeable in light of what is stated hereinbefore.

8 In the event, as a consequence of the decision of the Appellate Committee after rehearing the matter as directed, the fresh revised supplementary bill is of an amount lesser than the revised supplementary bill which has been issued and paid up by the petitioner, the petitioner would be entitled to refund and respondent authorities i.e. respondent nos. 1 and 2 are directed to refund the amount within a period of two weeks from the date of recomputed figure without the petitioner being required to make any claim in regard to the same.

9. Rule made absolute to the aforesaid extent. The respondent Board shall pay costs of Rs.2500/- to the petitioner.

Sd/-

(D.A.Mehta, J)

m.m.bhatt